

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3870 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ALAP COOP HSG SOC

Versus

DIST REGISTRAR

Appearance:

MR KS JHAVERI for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 18/02/2000

ORAL JUDGEMENT :

This Special Civil Application is filed by the
Chairman/ Secretary of Alap Cooperative Housing Society
(hereinafter referred to as "the petitioner society"),
challenging the order passed by the District Registrar,
Cooperative Societies (City), Ahmedabad, bearing No.CHKS/

1458/ 88 dated 5.7.1988, whereby an inquiry is ordered under sec.93 of the Cooperative Societies Act, 1961 (hereinafter referred to as "the Act"), in the matters which are mentioned in the schedule annexed to the aforesaid order. By the said order, Shri R.M. Mehta, respondent no.2 herein was appointed as the officer concerned to undertake inquiry as ordered by the District Registrar, Cooperative Societies.

2. The petitioner has pointed out that earlier a similar order was passed in the year 1982, which was challenged by the petitioner society, through its Chairman, who is the person, who has sworn the affidavit in the present petition and also before the Gujarat State Cooperative Tribunal, Ahmedabad in Appeal No.11 of 1983. Said Appeal came to be disposed of by a judgement and order dated 26.5.1986. Learned advocate, Mr.Jhaveri for the petitioner has invited the attention of the Court to the said judgement and order particularly, to para 9 wherein the Tribunal has directed the District Registrar to take into consideration the point of limitation agitated by the appellant before the Tribunal and to pass an appropriate order under sec.93 of the Act, wherein a time limit provided.

Sec.93 of the Act reads as under :

"93. Power of Registrar to assess damages
against delinquent, promoters, etc. --

(1) Where, in the course of or as a result of
an audit under sec.84, or an inquiry under sec.86
or an inspection under sec.87, or the winding up
of a society, the Registrar is satisfied on the
basis of the report made by the auditor or the
person authorised to make inquiry under sec.86,
or the person authorised to inspect the books
under sec.87, or the Liquidator under sec.110,
that any person who has taken any part, in the
organisation or management of the society or any
deceased, or past or present officer of the
society has, within a period of five years prior
to the date of such audit, inquiry, inspection or
order for winding up, misapplied or retained, or
become liable or accountable for, any money or
property of the society, or has been guilty of
misfeasance or breach of trust in relation to the
society, the Registrar or a person authorised by
him in that behalf may investigate the conduct of
such person or persons and after framing charges
against such person or persons, and after giving

a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the persons authorised under this section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine." (Emphasis supplied)

3. Learned advocate for the petitioner has invited the attention of the Court to the averments made in para 3 of the petition, where it is stated that it was for extraneous considerations and specifically at the behest of one Shri Motilal Makwana that the Registrar had passed the impugned order, Annexure 'A'. The District Registrar has not followed the directions given by the Tribunal in para 9 of its judgement and order dated 26.5.1986 and has passed the present impugned order mechanically, without taking into consideration the provisions of sec.93 of the Act, wherein it is specifically provided that the matters prior to the audit, inquiry, inspection or order for winding up within a span of five years only are required to be taken into consideration. The schedule which is annexed to the present impugned order which is passed in the year 1988 pursuant to the judgement and order of the Tribunal dated 26.5.1986, two matters pertain to year 1972, while others are of the years 1973, 1974 and one is of the year 1977. These matters are made the subject matter of the inspection/ investigation under the impugned order. (Emphasis supplied)

4. Though the matter is that of 1988 and rule was issued by this Court on 21.7.1988 by His Lordship Mr. Justice M.B. Shah (as he then was) and ad interim relief was granted in terms of para 9(B), the respondents have not chosen to file any counter to the averments made in the petition. The question agitated is a pure question of law and it is clear from the reading of sec.93 of the Act that the inquiry can be ordered under sec.93 of the Act by the Registrar in the matters pertaining to the period which is five years prior to the date of audit, inquiry or inspection or order to wind up and not beyond that. The Legislature in its wisdom has thought it fit to provide this time frame and the same is provided in no uncertain terms with a view to see that the powers conferred under sec.93 of the Act does not become unbridled powers. Thus, the order passed by the

respondent, District Registrar is contrary to the provisions of sec.93 of the Act and requires to be quashed and set aside.

5. In the result, the petition succeeds. The order passed by the District Registrar dated 5.7.1988, Annexure 'A' is hereby quashed and set aside. Rule is made absolute with no order as to costs.

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